

Central Coast Regional Water Quality Control Board

April 28, 2015

CERTIFIED MAIL
7009 2250 0001 0315 6151

Rex Allen Lewis
Dynegy Morro Bay, LLC
1290 Embarcadero Road
Morro Bay, CA 93442
rex.lewis@dynegy.com

**ENFORCEMENT PROGRAM: EXPEDITED PAYMENT LETTER (EPL) NO. R3-2015-0019,
OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM RELATING TO
VIOLATIONS OF NPDES PERMIT FOR DYNEGY MORRO BAY POWER PLANT (WDR
ORDER NO. R3-1995-0028, NPDES NO. CA0003743, WDID NO. 3 402003002)**

Dear Mr. Lewis:

This letter is to notify the Dynegy Morro Bay Power Plant (hereinafter "Permittee" or "you") of alleged violations of the California Water Code identified in the Central Coast Regional Water Quality Control Board's (Central Coast Water Board) water quality data system and to allow the Permittee to participate in the Central Coast Water Board's Expedited Payment Program to address \$3,000 in liability which may be assessed pursuant to Water Code sections 13385 and 13385.1.

NOTICE OF VIOLATION: Based on information in the California Integrated Water Quality System (CIWQS), the Central Coast Water Board's Assistant Executive Officer alleges that on July 26, 2011, the Permittee violated the oil and grease effluent limitation identified in the Notice of Violation (NOV) attached as Exhibit A. The Permittee will have the opportunity to address the alleged violation as discussed below. To assist the Permittee in reviewing the alleged violation, the attached NOV/Exhibit A provides instructions for accessing the alleged violation within CIWQS.

STATUTORY LIABILITY: Subdivisions (h) and (i) of California Water Code section 13385 require the assessment of a mandatory minimum penalty of \$3,000 for specified serious and non-serious (formerly named "chronic") effluent limit violations. The Permittee is also potentially subject to discretionary administrative civil liabilities of up to ten thousand dollars (\$10,000) for each day in which the violation occurs, plus ten dollars (\$10) for each gallon discharged but not cleaned up in excess of 1,000 gallons. These mandatory minimum penalties and discretionary administrative civil liabilities may be assessed by the Central Coast Water Board or the State Water Board (collectively "the Water Boards"), beginning with the date that the violations first occurred¹. The formal enforcement action that the Water Boards use to assess such liability is

¹ Please note that there are no statutes of limitation that apply to administrative proceedings to assess mandatory minimum penalties. See *City of Oakland v. Public Employees' Retirement System*, (2002) 95 Cal.App.4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.) The Permittee has not been substantially prejudiced by the passage of time between the date(s) that Permittee reported the violations identified on Exhibit A and the date of this letter. The Permittee was aware of the violations at the time it reported them to the Central Coast Water Board. Water Board staff's limited enforcement resources and competing enforcement priorities provide a rational explanation for the delay. In fact, the delay has actually benefited the Permittee because it extended the time before payment of the mandatory minimum penalties are due. For these reasons, any delay is not unreasonable.

an administrative civil liability complaint, although the Water Boards may instead refer such matters to the Attorney General's Office for prosecution. If referred to the Attorney General for prosecution, the Superior Court may assess up to twenty-five thousand dollars (\$25,000) per violation. In addition, the Superior Court may assess up to twenty-five dollars (\$25) per gallon discharged but not cleaned up in excess of 1,000 gallons.

OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM: The Permittee can avoid the issuance of a formal enforcement action and settle the alleged violations identified in the attached NOV by participating in the Central Coast Water Board's Expedited Payment Program. Details of the proposed settlement are described below and addressed in the enclosed documents.

To promote resolution of these violations, the Central Coast Water Board enforcement staff makes this Conditional Offer. The Permittee may accept this offer, waive the Permittee's right to a hearing, and pay the mandatory minimum penalty as indicated on Exhibit A for the violations described. If the Permittee elects to do so, subject to the conditions below, the Central Coast Water Board will accept that payment in settlement of any enforcement action that would otherwise arise out of the violations identified in the NOV. Accordingly, the Central Coast Water Board enforcement staff will forego issuance of a formal administrative complaint, will not refer the violations to the Attorney General, and will waive its right to seek additional discretionary civil liabilities for the violations identified in the NOV.

The Expedited Payment Program does not address liability for any violation that is not specifically identified in the NOV.

PERMITTEE'S OPTIONS FOR RESPONSE TO OFFER: If you accept this offer, please complete and return the enclosed "Acceptance of Conditional Resolution and Waiver of Right to Hearing; Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R3-2015-0019 (Upon Execution)" (Acceptance and Waiver) **no later than May 28, 2015**. The returned Acceptance and Waiver will be held, pending a 30-day public notice period, and then will be counter-signed by the Executive Officer and returned to you with an invoice for payment.

If you contest some but not all of the violations identified in the attached NOV, the Permittee may elect to reserve the right to address the contested matters and resolve any uncontested violations through the payment of the mandatory minimum penalty for each uncontested violation. If the Permittee chooses this option, please communicate with the staff contact identified below to discuss the mechanism for memorializing that election on or before the due date.

If the Permittee chooses to contest any of the violations alleged in the NOV, please identify the specific violation and the basis for the challenge (factual error, affirmative defense, etc.) on or before the due date. Central Coast Water Board staff will evaluate the contested violation and take one of two actions:

- 1) Central Coast Water Board staff will determine that the violation is not supported, expunge the alleged violation from the CIWQS database, take no further action against the Permittee for the alleged violation, and notify the Permittee of that determination;
- 2) Central Coast Water Board staff will determine that the alleged violation is validated, notify the Permittee, and provide 30 days for the Permittee to submit a supplemental Expedited

Payment for those violations. If the Permittee chooses not to make a payment in response to the determination, the Permittee should expect to be contacted regarding formal enforcement action that will be initiated with regard to the contested violations. In a formal enforcement action, the liability amount sought and/or imposed may exceed the liability amount set forth in this Conditional Offer. Moreover, the cost of enforcement is a factor which can be considered in assessing the liability amount.

CONDITIONS FOR WATER BOARD ACCEPTANCE OF RESOLUTION: Federal regulations require the Central Coast Water Board to publish and allow the public 30 days to comment on any settlement of an enforcement action addressing NPDES permit violations [40 C.F.R. section 123.27(d)(2)(iii)]. Upon receipt of the Permittee's Acceptance and Waiver, Central Coast Water Board enforcement staff will publish a notice of the proposed resolution of the violations.

If no comments are received within the 30-day period, and unless there are new material facts that become available to the Central Coast Water Board, the Executive Officer will execute the Acceptance and Waiver as a settlement agreement and stipulation for entry of administrative civil liability order assessing the uncontested mandatory minimum penalty amount pursuant to Water Code section 13385.

If, however, significant comments are received in opposition to the settlement, this Offer may be withdrawn. In that case, the Permittee's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. In that case, the unresolved violations will be addressed in a liability assessment proceeding. At the liability assessment hearing the Permittee will be free to make arguments as to any of the alleged violations, and the Permittee's agreement to accept this conditional offer will not in any way be binding or used as evidence against the Permittee. The Permittee will be provided with further information on the liability assessment proceeding.

In the event the Acceptance and Waiver is executed by the Executive Officer, payment of the assessed amount shall be due and payable within 30 days and as specified in the letter and/or invoice that will accompany the Permittee's receipt of the Executive Officer's signed stipulated order. Failure to pay the penalty within the required time period may subject the Permittee to further liability.

OPPORTUNITY FOR SUPPLEMENTAL ENVIRONMENTAL PROJECT OR COMPLIANCE PROJECT IN LIEU OF ADMINISTRATIVE LIABILITY: In lieu of paying to the State Water Board Cleanup and Abatement Account all of the mandatory minimum penalty, the Permittee may elect to use part of the penalty to fund a supplemental environmental project (SEP) as defined in the State Water Board's Supplemental Environmental Project Policy. There is currently one SEP option available:

1. **Groundwater Assessment and Protection (GAP):** GAP is focused on the assessment and protection of groundwater, providing the public with information about the safety of their drinking water, and the provision of drinking water for disadvantaged communities. Funding for GAP is managed and administered by the non-profit Bay Foundation of Morro Bay. No SEP funds are directed to the Central Coast Water Board. More information on GAP is available at:

http://www.waterboards.ca.gov/centralcoast/water_issues/programs/gap/index.shtml

GAP is an established, on-going, region-wide project administered by an approved third party, which allows the Permittee to satisfy its selected project obligations by transferring the agreed-

upon funds in a timely manner. Funds derived from suspended liability related to the alleged violations are appropriate for this SEP because the project is implemented throughout the region and is related to waters associated with the Permittee's waste discharge. The State Water Board Office of Enforcement has approved GAP as an appropriate SEP. The Central Coast Water Board has established GAP as a top priority for SEP funding. Central Coast Water Board staff will not accept SEP proposals other than that listed above as part of the EPL process.

Permittees may choose to pay the total settlement amount to the State Water Board's Cleanup and Abatement Account (CAA) rather than fund the above SEP. The CAA's primary purpose is to address drinking water and drought issues throughout California.

The SEP and CAA options are represented in the enclosed Acceptance and Waiver. If you want to discuss any of the above options, please contact the person identified below.

CONTACT PERSON: Should you have any questions about the Notice of Violation or the Conditional Offer, please contact Peter von Langen at (805) 549-3688 or Peter.VonLangen@waterboards.ca.gov, or Thea Tryon at (805) 542-4776 or Thea.Tryon@waterboards.ca.gov.

Sincerely,

Michael J. Thomas
Assistant Executive Officer

- Encl. – 1. Exhibit A - Notice of Violation
2. Acceptance of Conditional Resolution and Waiver of Right to Hearing; Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R3-2015-0019 (Upon Execution)

cc: Thea Tryon, Central Coast Water Board Enforcement Coordinator
Peter von Langen, Central Coast Water Board Permitting Staff
Sheila Soderberg, Central Coast Water Board Permitting Supervisor
Jill North, Central Coast Water Board Enforcement Staff
Todd Stanley, Central Coast Water Board Enforcement Staff
Michael Thomas, Central Coast Water Board Assistant Executive Officer

Exhibit A – Notice of Violation
Dynegy Morro Bay Power Plant
ALLEGED VIOLATIONS (July 26, 2011)
MANDATORY MINIMUM PENALTY VIOLATIONS REQUIRING ENFORCEMENT

The Enforcement staff of the Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) reviewed information submitted by this facility to determine whether the discharger is subject to mandatory minimum penalties (MMPs) pursuant to subdivisions (h) and (i) of California Water Code section 13385. The following table lists this facility's alleged violations of Waste Discharge Requirements Order No. R3-1995-0028, NPDES Permit No. CA0003743 on July 26, 2011, for which the Central Coast Water Board has not assessed MMPs. Final calculation of MMP amounts owed and descriptions of the abbreviations that appear in the table are also listed below.

For additional information about the alleged violations listed in the table, please refer to the State Water Resources Control Board CIWQS Public Reports webpage http://www.waterboards.ca.gov/water_issues/programs/ciwqs/publicreports.shtml and select the "Mandatory Minimum Penalty (MMP) Report" link located under the "Violations Reports" category. Once in the Mandatory Minimum Penalty Reports search page, select Region 3 along with the beginning and ending dates (i.e., July 26, 2011 – July 26, 2011), select Run Report, and then select your facility to access the list of violations. Expand the Effluent MMP Violations section of the page by selecting the "+" icon to the left of the section title. To view details of a violation, select the Violation ID number. For chronic violations, select the "Chronic" link in the "MMP Type" column to see a list of the three or more violations preceding each chronic violation within 180 days and thus qualifying the chronic violation as a MMP.

#	Violation Number	Violation Date	Pollutant	Pollutant Type	Limitation Period	Limit	Result	Units	% Over Limit	Serious or Non-Serious Violation	Date 180 Days Prior	No. of Viols within 180 days	Penalty
1	911610	07/26/2011	Oil and Grease	Group 1	Daily Maximum	20	32	mg/L	60%	S	N/A	N/A	\$ 3,000

Total Penalty: \$3,000

Total Mandatory Minimum Penalty Amount for Effluent Violations

(1 Serious Violation + 0 Non-Serious Violations) × \$3,000 = \$3,000

For Group 1 pollutants, a violation is serious when the limit is exceeded by 40% or more, and non-serious (formerly “chronic”) when the limit is exceeded by less than 40%.

For Group 2 pollutants, a violation is serious when the limit is exceeded by 20% or more, and non-serious when the limit is exceeded by less than 20%.

For “Other” (i.e., Other Effluent Violation) pollutants, a violation is non-serious when the limit is exceeded by any amount. For the purposes of MMP enforcement, Other Effluent Violations are not categorized as serious.

Serious violations are subject to a penalty of no less than \$3,000 each, as are non-serious violations when preceded by three or more specified violations within any period of 180 days.

Definitions

CIWQS	California Integrated Water Quality System database used by the Water Boards to manage violation and enforcement activities, as well as other data types relevant to water quality protection.
NPDES	National Pollutant Discharge Elimination System permit program that controls water pollution by regulating point sources that discharge pollutants into waters of the United States.
Violation Number	Identification number assigned to a violation in CIWQS.
Violation Date	Date that a violation actually occurred, with the exception that for some violation types, such as a monthly average, the last day of the reporting period is used. If the occurrence date is unknown, the date used is the day the violation was first discovered by staff, the Discharger, or a third party.
Pollutant Types: Group 1 & 2	Groups of pollutants defined in the State Water Resources Control Board Water Quality Enforcement Policy. Also referred to as Category 1 or CAT1, Category 2 or CAT2, respectively.
Pollutant Type: Other	“Other” refers to “Other Effluent Violation”. Group of pollutants other than those included in Group 1 or 2.
mg/L	Milligrams per liter

**ACCEPTANCE OF CONDITIONAL RESOLUTION
AND WAIVER OF RIGHT TO HEARING;**

**SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL
LIABILITY ORDER NO. R3-2015-0019 (UPON EXECUTION)**

Dynegy Morro Bay Power Plant
EPL No. R3-2015-0019
Waste Discharge Requirements Order No. R3-1995-0028
National Pollutant Discharge Elimination System (NPDES) Permit No. CA0003743

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Central Coast Regional Water Quality Control Board (Central Coast Water Board), the Dynegy Morro Bay Power Plant (Permittee) hereby accepts the "Offer to Participate in Expedited Payment Program" (Offer) and waives the right to a hearing before the Central Coast Water Board to dispute the alleged violations described in the Notice of Violation (NOV) attached to the Offer as Exhibit A and incorporated herein by reference.

The Permittee agrees that the NOV shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the Central Coast Water Board to assert jurisdiction over the alleged violations through its enforcement staff. The Permittee agrees to pay the penalties authorized by California Water Code section 13385, as specified in the NOV (Expedited Payment Amount), which shall be deemed payment in full of any civil liability pursuant to the Water Code sections 13385 and 13385.1 that otherwise might be assessed for the violations described in the NOV.

Expedited Payment Amount: **\$3,000.**

The Permittee understands that it may pay up to the maximum allowable portion¹ of the Expedited Payment Amount towards the Supplemental Environment Project (SEP) it indicates with an "X" in the first column of the table below. If selecting this option, the Permittee will indicate in the second column of the table below how much of the maximum allowable portion it will direct to the selected SEP. If the Permittee does not select the SEP option, the Permittee shall pay the total Expedited Payment Amount to the State Water Resources Control Board Cleanup and Abatement Account.

Maximum Allowable Portion for SEPs: **\$1,500.**

Check Below to Select the SEP Option	Amount (\$) of Maximum Allowable Portion for this SEP	SEP Name
		Groundwater Assessment and Protection (GAP)

¹ Pursuant to Water Code section 13385(l)(1), if the penalty amount exceeds \$15,000, the amount the Water Board may direct to a SEP may not exceed \$15,000 plus 50 percent of the penalty amount over \$15,000. For penalty amounts of \$15,000 or less, the Water Board may direct half of the full amount to a SEP.

Expedited Payment Letter (EPL) No. R3-2015-0019
NPDES Permit No. CA0003743

The Groundwater Assessment and Protection (GAP) program is the SEP option offered above. GAP is focused on addressing drinking water issues in disadvantaged communities. Information on GAP is available here:

http://www.waterboards.ca.gov/centralcoast/water_issues/programs/gap/index.shtml

Funding for GAP is managed and administered by the non-profit Bay Foundation of Morro Bay. No SEP funds are directed to the Central Coast Water Board.

The State Water Resources Control Board's Enforcement Policy provides that payments for SEPs shall be treated as suspended liabilities pending completion of the SEP, or portion thereof, at which time the suspended liability becomes permanently waived by the Central Coast Water Board. By selecting the SEP option, the Permittee understands and acknowledges that the suspended portion of its Administrative Civil Liability is permanently suspended upon being spent towards the SEP by the party implementing the SEP. If the implementing party is unable to spend any portion of the suspended liability towards the SEP, then Central Coast Water Board staff will direct the implementing party to pay that amount to the Cleanup and Abatement Account to permanently suspend the remaining liability.

The Permittee understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the Notice of Violation.

Upon execution by the Permittee, the Permittee shall return this Acceptance and Waiver to:

Thea Tryon
Enforcement Coordinator
Central Coast Water Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

The Permittee understands that federal regulations set forth in title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Central Coast Water Board to publish notice of and provide at least 30 days for public comment on any proposed resolution of this enforcement action. Accordingly, this Acceptance and Waiver, prior to execution by the Executive Officer of the Central Coast Water Board, will be published as required by law for public comment.

The Permittee understands that if significant comments are received in opposition to the Offer, the Central Coast Water Board enforcement staff's offer to resolve the violations set forth in the NOV may be withdrawn. In that circumstance, the Permittee will be advised of the withdrawal and an administrative civil liability complaint may be issued and the matter may be set for a hearing before the Central Coast Water Board. For such a liability hearing, the Permittee understands that this Acceptance and Waiver executed by the Permittee will be treated as a settlement communication and will not be used as evidence in that hearing.

If no comments are received within the notice period that causes the Executive Officer to reconsider the Offer, the Executive Officer will execute the Acceptance and Waiver as Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R3-2015-0019 (Settlement and Order).

Expedited Payment Letter (EPL) No. R3-2015-0019
NPDES Permit No. CA0003743

The Permittee understands that after the signed Acceptance and Waiver is publicly noticed and executed by the Executive Officer of the Central Coast Water Board, Water Board staff will transmit the executed Settlement and Order to the Permittee with payment instructions and due dates. Furthermore, the Permittee understands that full payment of the Expedited Payment Amount, including any allowable portion of which is authorized for use in SEPs, within 30 days after staff transmits the executed Settlement and Order is a condition of this Acceptance and Waiver.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Permittee in the making and giving of this Acceptance and Waiver and the terms of the Settlement and Order.

By: _____
(Signed Name) (Date)

(Printed or typed name)

(Title)

Expedited Payment Letter (EPL) No. R3-2015-0019
NPDES Permit No. CA0003743

IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13385

Date: _____

By: _____
Kenneth A. Harris Jr.
Executive Officer
Central Coast Water Board

File Location: R:\RB3\Enforcement\EPLs\2015 Morro Bay Power Plant\Morro Bay Power Plant - MMP EPL
Acceptance-Waiver Form.docx
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